

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

LULAC, *et al.*,

Plaintiffs,

v.

GREG ABBOTT, in his official capacity as
Governor of Texas, *et al.*,

Defendants.

Case No. 3:21-CV-00259-DCG-JES-JVB
[Lead Case]

ROY CHARLES BROOKS, FELIPE
GUTIERREZ, PHYLLIS GOINES, EVA
BONILLA, CLARA FAULKNER,
DEBORAH SPELL, BEVERLY POWELL,
SANDRA M. PUENTE, JOSE R. REYES,
SHIRLEY ANNA FLEMING, LOUIE
MINOR JR, and NORMA CAVAZOS,

Plaintiffs,

v.

GREG ABBOTT, in his official capacity as
Governor of Texas; JOHN SCOTT, in his
official capacity as Secretary of State of
Texas,

Defendants.

Case No. 1:21-CV-00991-DCG-JES-JVB
[Consolidated Case]

***BROOKS PLAINTIFFS' MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT***

Plaintiffs' Roy Charles Brooks, Felipe Gutierrez, Phyllis Goines, Eva Bonilla, Clara Faulkner, Deborah Spell, Beverly Powell, Sandra M. Puente, Jose R. Reyes, Shirley Anna Fleming, Louie Minor Jr., and Norma Cavazos (collectively the "Brooks Plaintiffs"), by and through their undersigned counsel, pursuant to Fed. R. Civ. P. 15(a) and the Court's December 17,

2021 Scheduling Order (ECF No. 96), file this motion for leave to amend their complaint. The First Amended Complaint is attached hereto as Exhibit 1, and a redline showing the proposed changes is attached as Exhibit 2. This motion is unopposed by Defendants and is Plaintiffs' first motion to amend their complaint.

Brooks Plaintiffs amend their complaint for the following reasons. First, the Books Plaintiffs amend to clarify Plaintiff Spell's allegations given the Court's ruling in the initial motion to dismiss her claim, *See* ECF No. 144. Second, Brooks Plaintiffs seek to add claims that House Bill 1, the enacted redistricting plan for the Texas House of Representatives, violates Section 2 of the Voting Rights Act (VRA), the Fourteenth Amendment, and the Fifteenth Amendment by having both discriminatory effects and by being enacted with discriminatory intent with respect to House Districts 54 and 55 in Bell County and House District 118. Brooks Plaintiffs have added Plaintiffs who live in the affected House districts. Third, Brooks Plaintiffs are adding claims that the congressional map enacted by Texas, C2193, has discriminatory results against Black and Hispanic voters in the Dallas-Fort-Worth area and Hispanic voters in the Houston area in violation of Section 2 of the VRA. Brooks Plaintiffs have included Plaintiffs who live in the effected Congressional districts.

The amendments proposed will not cause delay to this instant suit nor prejudice any Defendant,

ARGUMENT

Leave to amend the Complaint to include the clarification of allegations and to include Brooks Plaintiffs' claims regarding House Districts 45, 55, and 118 and the Congressional map with respect to the Dallas-Fort-Worth and Houston areas should be granted.

Pursuant to Federal Rule of Civil Procedure 15, “a party may amend its pleading . . . with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” The United State Supreme Court has stated in *Foman v. Davis*, 371 U.S. 178, 182 (1962), that “[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’” Further, “[t]he policy of the federal rules is to permit liberal amendment.” *Dussouy v. Gulf Coast Inv. Corp.*, 660 F. 2d 594, 598 (5th Cir. 1981).

Brooks Plaintiffs’ proposed amendments will not delay the proceeding. Plaintiffs’ proposed amendments provide clarification regarding Plaintiff Spell’s allegations with respect to the deficiencies of the enacted plan for Texas Senate districts. Plaintiffs also add few additional claims with respect to the Texas Congressional districting plan in the Dallas/Fort Worth and Houston areas and Texas House Districts 54 and 55 in Bell County, TX, and House District 118.

No party, especially Defendants, will be prejudiced by allowing such amendments. The facts described in the Amended Complaint are well-known to Defendants. Additionally, the State Defendants are already engaged in discovery concerning both the House and Congressional enacted maps and discovery is still in its initial stages. Indeed, discovery is not scheduled to close until July 15, 2022. Also, Brooks Plaintiffs’ motion to amend this Complaint for the first time, is in part to ensure that any alleged deficiencies will be removed. Lastly, amending the Complaint is not clearly futile, as plaintiffs have plead facts that, if proven, would lead to redress of injuries alleged.

In short, the Brooks Plaintiffs' amendments will not cause undue delay, are not being made in bad faith, nor has there been any failures to cure deficiencies by previous amendments.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Leave to File First Amended Complaint and that the proposed First Amended Complaint be accepted and docketed as filed.

April 14, 2022

Respectfully submitted,

/s/ Chad W. Dunn

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**Admitted pro hac vice*

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CERTIFICATE OF SERVICE

I certify that all counsel of record were served a copy of the foregoing this 14th day of April 2022, via the Court's CM/ECF system.

/s/ Mark P. Gaber
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